

## REMARKS

Reconsideration and allowance of the application on the basis of the foregoing amendments and for other reasons are respectfully requested.

Applicant notes that the Examiner has withdrawn the FINAL.

Seven claims (2-6, 18, and 26) are pending in the application, and stand rejected. Nineteen claims (1, 7-17, and 19-25) stand canceled.

Claims 2, 4, and 5 stand rejected under 35 USC 103(a) as being unpatentable over Hirota (JP406063093) in view of Perlman (4,998,006); the Examiner stating that "Hirota teaches substantially the claimed invention comprising a compact sauna (Fig. 1-5) for causing a user to sweat, plural heat sources 2 are provided in the lower portion of the floor consisting of a far infrared radiator 1 and heat generated from the heat source 2 is subjected to electromagnetic radiation into a sauna room through the far infrared radiator 1 (Abstract). However Hirota does not disclose a low-level of extremely low frequency electromagnetic fields."; and that "Perlman discloses heating elements that can be used in heating panels where the device is brought into proximity with the human body". The Examiner thereafter states that "it would have been obvious to combine in order to reduce potential harmful effects of magnetic fields produced by room heating panels (Col.1, lines 44-55 and Col. 10)".

Reconsideration is requested.

As the Examiner correctly notes, Hirota's plural heat sources 2 are provided in the lower portion of the floor. But applicants' claims require "continuously-active broad infrared source elements safe to touch disposed in close proximity to the user so that infrared radiation absorbed by the user constitutes the primary means for inducing the user to sweat and uniformly about the user so that the user is evenly heated". Thus the continuously-active broad infrared source elements that are safe to touch must be

disposed in close proximity to the user so that infrared radiation absorbed by the user constitutes the primary means for inducing the user to sweat and must be disposed uniformly about the user so that the user is evenly heated. Hirota does not teach infrared source elements that are safe to touch disposed in close proximity to the user so that infrared radiation absorbed by the user constitutes the primary means for inducing the user to sweat, nor that they be disposed uniformly about the user so that the user is evenly heated.

These deficiencies in Hirota are not made up for by Perlman. Perlman does not disclose heating elements to be used in "heating panels brought into proximity with the human body".

Applicants are not sure that it may "have been obvious to combine" Perlman with Hirota "in order to reduce potential harmful effects of magnetic fields produced by room heating panels". But that is not what applicants' claims are limited to; and what applicants' claims are limited to was not obvious to a person skilled in the art! Nor was it obvious how to combine Hirota and Perlman to produce the structure called for in the claims: which structure includes continuously-active broad infrared source elements that are safe to touch and disposed in close proximity to the user so that infrared radiation absorbed by the user constitutes the primary means for inducing the user to sweat and disposed uniformly about the user so that the user is evenly heated and the infrared source elements emit only a low-level of extremely-low-frequency electromagnetic fields, and continuously-active broad alternating-current electric infrared heaters emitting a low level of extremely-low-frequency electromagnetic fields for heating the infrared source elements.

There is absolutely no indication in the Hirota that he appreciated the concept of disposing "continuously-active broad infrared source elements" "in close proximity to the user so that infrared radiation absorbed by the user" constitute "the primary means for inducing the user to sweat and uniformly about the user so that the user is evenly heated". He certainly does not show them "in close proximity to the user so that infrared radiation

absorbed by the user" constitutes "the primary means for inducing the user to sweat and uniformly about the user so that the user is evenly heated". Furthermore the evidence is otherwise than that he contemplated that thought, for though he states that "Heat generated from this heat source 2 is subjected to electromagnetic radiation into a sauna room through the far infrared radiation radiator 1, he also states: "Also, in this case, an air ventilation device 6 consisting of a plate-like member 7 having many through holes 8 is provided in a suitable position on the upper side of these heat sources 2, so that high temperature air generated by the heat source is dispersed and emitted to the upper part": clearly to regulate the heat being distributed by convection. Thus while Hirota may rely in part on infrared radiation to heat a sauna user, there is no showing that he relies primarily on infrared radiation to heat a user directly, as he regulates the convection heating to control the temperature. Thus the claims distinguish over Hirota inter alia by calling for "continuously-active broad infrared source elements disposed in close proximity to the user so that infrared radiation absorbed by the user constitutes the primary means for inducing the user to sweat" and for "continuously-active broad infrared source elements" "disposed uniformly about the user so that the user is evenly heated". Hirota's heater also cannot be deemed a "continuously-active broad infrared source elements disposed uniformly about the user so that the user is evenly heated".

To make more clear applicants' structural distinctions over Hirota "enabling infrared radiation absorbed by the user" to constitute "the primary means for inducing the user to sweat", applicants have further amended the claims. Thus base claim 2, and hence dependent claims 4 and 5, now recite "continuously-active broad infrared source elements safe to touch disposed in close proximity about the user", rather than just "in close proximity to the user".

An appreciation of applicants' "about the user" structure may be gained from a glance at the Attachment this Amendment. The Attachment is a copy of Fig. 6 of applicants' Replacement Drawings. ["Fig. 6 is a diagrammatic view from the right side of the interior of a slightly modified version of the sauna shown in Fig. 1, with its door closed and showing a user seated on another type of adjustable seat."] In the Attachment

drawing, the infrared sources have been outlined in red. Thus, door infrared sources 40, 42, 44, 46, and 48, are portrayed covering the front of a user; infrared sources 54 and 56 as covering left side of a user, and infrared source 58 as covering the back of a user. Of course, infrared sources 50 and 52 (not shown in Fig. 6) cover the right side of a user. The average distance from heater to skin, considering the whole body of the user, is deemed to be on the order of five or six inches, insuring that "infrared radiation absorbed by the user constitutes the primary means for inducing the user to sweat".

Applicants urge that a modification of Hirota in the light of Perlman would not have result in applicants' invention.

Applicants also urge that there was no call to modify Hirota in view of Perlman. Hirota's infrared radiator 1 is located in the floor of the sauna, a position below the feet of a would-be user. As shown in the empirical evidence set forth in Fig. 3 of the applicants' application drawings, about two-thirds (2/3) of the EMF generated by a normal infrared heater are dissipated in the first six (6) inches, and over half of the remaining in the next six (6) inches. Hence EMF radiation is not a serious problem when a user rests on a seat in Hirota's sauna. Thus a person skilled in the art would not have been motivated to combine Perlman with Hirota.

To merit the rewards of combining Perlman with Hirota, the person skilled in the art would have had to modify Hirota. Such reconstruction of a basic reference to anticipate applicants' device is improper. The destructive modification of one device to anticipate another was declared improper in *Ex Parte Johnson*, 17 USPQ 374 (1932): "Where modification of the structure shown by a reference to meet the claims of applicant's application would require reconstruction of the device by removing parts that are essential for the intended operation and by substituting others which were not contemplated, rejection of the claims on such a reference is not sound." See also *Johnson v. Tvedt*, 244 F. 189, which held: "In order to constitute anticipation of a patented invention, it is not sufficient that the device relied upon might with some change be made

to accomplish the function performed by that invention if it were not designed by its maker to accomplish it or actually used for its accomplishment."

Moreover, "It is wrong to use the patent in suit [application here] as a guide through the maze of prior art references, combining the right reference in the right way so as to achieve the result of the claims in suit [application here]. Monday morning quarterbacking is quite improper when resolving the question of nonobviousness in a court of law." *Orthopedic Equipment v. United States*, 702 F.2<sup>nd</sup> 1005, at 1012, 217 USPQ 193, at 199 (Mar. 11, 1983).

Claims 2, 4, and 5 would appear to be clearly patentable over Hirota in view of Perlman.

Claims 3, 18, and 26 were rejected under 35 USC 103(a) as being unpatentable over Hirota in view of Perlman, the Examiner saying that "Hirota in view of Perlman teaches substantially the claimed invention as stated above", and observing that Hirota "does not disclose a low-level of extremely low frequency electromagnetic fields". The Examiner then notes that "Perlman discloses heating elements that can be used in heating panels where the device is brought into proximity with the human body."

Claim 3 is dependent on claim 2. As noted above, Hirota in view of Perlman does not anticipate the device set forth in claim 2. So Hirota in view of Perlman can not anticipate claim 3. And claim 3 is further patentable for its additional limitations. The art does not teach "protrusions on the elements" projecting "outwards towards the user" and "spaced close enough to thwart fingers being inserted between them".

The protrusion deficiencies are not made-up-for by Perlman. Substituting Perlman's planar infrared heater with protrusions projected towards the user for better heating effect, to generate a heat sink, and to reduce power consumption, would still not

result in a device required by the claim. He certainly does not show the planar infrared heaters "in close proximity to the user so that infrared radiation absorbed by the user" constitutes "the primary means for inducing the user to sweat and uniformly about the user so that the user is evenly heated". Thus the claim distinguishes from Perlman *inter alia* by calling for "continuously-active broad infrared source elements disposed in close proximity to the user so that infrared radiation absorbed by the user constitutes the primary means for inducing the user to sweat". It also distinguishes by calling for "continuously-active broad infrared source elements disposed uniformly about the user so that the user is evenly heated".

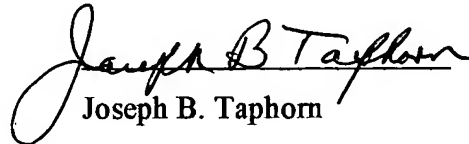
Claim 18 sets forth substantial details (not taught by Perlman) on a protrusioned infrared source element in a particular infrared heater, together with a panel for spacing the heater from any wall on which it may be mounted, which too is not taught in the art.

Claim 26 is directed to an EMF-safe compact sauna, and distinguishes patentably over Hirota in view of Perlman for all of the reasons that claim 2 does, and for the myriad of untaught sauna detail set forth therein. In addition, it too has been amended to now recite "continuously-active broad infrared source elements safe to touch disposed in close proximity about the user", rather than just "in close proximity to the user".

Claim 6 was rejected under 35 USC 103(a) as being unpatentable over Hirota in view of Perlman and further in view of Grise et al (4,485,297); the Examiner opining that Hirota in view of Perlman teaches substantially the claimed invention, while recognizing that they do not disclose that the heaters are comprised of a thin substrate bearing a semi-conductor pattern, a pair of longitudinal stripes and metallic conductor overlaying each stripe, which he states that Grise discloses. Claim 6 is dependent on claims 5 and 2 which applicants have urged above do not teach substantially the claimed invention, particularly as amended; thus, applicants maintain that claim 6 is patentable over Hirota in view of Perlman and Grise, for Grise does not make up for the deficiencies of Hirota and Perlman.

Wherefore applicants believe that the rejected claims are allowable, particularly as amended; and that this application has been placed in condition for allowance, which favorable action at an early date is earnestly solicited.

Respectfully submitted,



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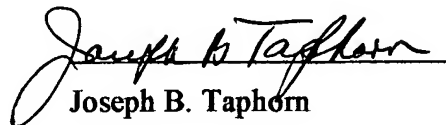
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**Attachment**

**CERTIFICATE OF MAILING** - The undersigned certifies that this correspondence addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, has been deposited in the United States Postal System as first class mail with sufficient postage on October 8, 2004.



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